IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11488 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ALABHAI NATHABHAI RABARI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11488 of 2004

MR HN JOSHI FOR M/S THAKKAR ASSOC. for Petitioner

MS HANSA PUNANI, LD.AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 28/12/2004

ORAL JUDGEMENT

Heard Mr.H.N.Joshi, learned counsel appearing for the petitioner and Ms.H.B.Punani, learned AGP, appearing on behalf of the respondents.

2. The present petition is filed under Article 226 read with Articles 21 and 22 of the Constitution of India. The petitioner has challenged legality and validity of the order of detention dated 20th March, 2004, passed by the District Magistrate, Junagadh, City, under purported exercise of powers vested with the detaining authority under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short 'the Act'). The petitioner is branded as a "dangerous person" within the meaning of Section 2(c) of the Act.

3. While passing the order of detention, the detaining authority has considered the fact of registration of six different offences between 27th July, 2001, and 07th February, 2004, i.e. within span of two and half years approximately, and the facts stated by four independent witnesses from public who have narrated the activity of the petitioner as of a "dangerous person" harassing the people from public for no reason. It is also the allegation that he was found moving by the witnesses in one Tata Sumo Car with weapon like iron-pipe, knife etc.

4. The grounds for detention have been conveyed to the detenu when the order was executed and the details of statements of four witnesses and six criminal cases registered by "B" Division Junagadh Police Station is also given in a tabular form. Mr.Joshi, learned advocate for the petitioner has pointed out that, he was found involved in serious offence in the year 2003-2004, and the last offence was registered on 7th February, 2004, is punishable under Sec.395 read with other Sections punishable under Indian Penal Code and Bombay Police Act.

5. The order is assailed on various grounds. However, two main points have been canvassed by learned advocate for the petitioner. The first point pressed into service by the petitioner is that, this is a case of gross delay caused in passing the order of preventive detention. It is argued that, this Court has consistently considered the last date of offence committed when the grounds for delay caused in passing the order of detention has come up for appreciation. Un-explained delay would vitiate the detention as well as order of detention, because, as per settled legal position, the preventive detention order should be passed promptly and expeditiously, and delay, if caused, in passing such order, should be explained in a convincing manner. It is rightly argued that, after registration of the last offence on 7th February, 2004, the sponsoring authority has recorded statements of four witnesses on

14th February, 2004. However, these statements were not taken before the detaining authority and the District Magistrate for verification for about one month, and these statements have been verified by the authority on 15th March, 2004. So this gross delay caused of one month has remained unexplained even after the verification of the statements by the detaining authority on 13th March, 2004, the order of detention was passed on 20th March, 2004. So further delay caused in passing the order, in such situation should have been explained properly.

6. In support of this submission, the learned advocate has placed reliance on the decision of this Court in Special Civil Application No.10182 of 2003 decided on 26th August, 2003 (Coram: J.R.Vora, J.), particularly para 6 of the judgment, and therefore it is not necessary to reproduce para 6 of this decision, but the ratio is that the preventive detention order should be passed promptly and the delay which cannot be said to be reasonable, and the time consuming in passing the preventive detention order needs satisfactory explanation. Absence of such explanation would made the order bad. So the Court is of the view that there is some force in the submission of the learned advocate for the petitioner.

7. The second point pressed into service by the learned advocate for the petitioner is that though the petitioner is found involved in six different criminal offences, but out of that six offences, two offences have been committed in the year 2001-2002 respectively, and the last one is in the month of February, 2004, therefore, this Court should hold that the activities of the present petitioner ought not to have been considered as dangerous are serious threat to the maintenance of public order within the meaning of Sec.2(c) of the Act.

8. Without entering into the merit of this submission, as this Court is satisfied that unexplained delay caused in passing the order of detention for about more than one month would affected adversely to the validity of the order, and therefore, on this sole ground, the petition is required to be allowed.

9. In view of the above, the present petition is allowed. The order of detention dated 20th March, 2004, passed by the respondent No.2 herein is quashed and set aside and the petitioner-detenu is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute with no order as to costs.

Direct service is permitted.

(C.K.Buch, J.)

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